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Before the Subcommittee on Defense,  
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# DEFENSE ACQUISITIONS

## Managing Risk to Achieve Better Outcomes

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## Why GAO Did This Study

In fiscal year 2009, the Department of Defense (DOD) spent nearly \$384 billion on contracts. This investment, representing over 70 percent of total government contract spending, highlights the great need to better manage risk in acquisitions. But DOD has not always managed risks effectively: major systems continue to take longer to develop, cost more, and deliver fewer quantities and capabilities than originally planned. In addition, poorly managed growth in services spending has contributed to disappointing program outcomes. DOD weapon system acquisition and contract management have been on GAO's high-risk list for nearly 20 years.

This testimony focuses on (1) planning of DOD's acquisitions; (2) contract types and the award process, including bid protests; (3) outcomes of major acquisition programs; and (4) acquisition and contractor workforce management. It also highlights relevant reforms in each area.

This statement is based on GAO's body of work on DOD acquisitions and contracting and on GAO's statutory role in issuing bid protest decisions. GAO has made numerous recommendations in prior work but is not making any new recommendations in this testimony.

View [GAO-10-374T](#) or key components. For more information, contact Paul Francis at (202) 512-4841 or [francisp@gao.gov](mailto:francisp@gao.gov).

## DEFENSE ACQUISITIONS

### Managing Risk to Achieve Better Outcomes

#### What GAO Found

The first and perhaps best opportunity to reduce risk in an acquisition program is in the early planning phase when critical decisions with significant implications for the program's overall success are made. Early and effective planning helps minimize risks in both weapon system and services acquisitions. GAO has reported on the importance of prioritizing needs, adequately defining requirements, and using a solid, executable business case before committing resources to a program. DOD must demonstrate that the warfighter's needs are valid and can best be met with the chosen concept and that the chosen concept can be developed and produced with existing resources.

DOD can also protect the government's interest by selecting contracting instruments that provide the proper allocation of risk between the government and contractor and by ensuring competition. Promoting competition can save money, improve contractor performance, and promote accountability. GAO's bid protest process also serves valuable public interests by providing transparency in the procurement system and guidance to the procurement community without undue disruption to the acquisition process.

Risks that are not effectively managed in the earlier phases may result in poor program outcomes as programs move into the execution phase of the acquisition process. Problems are much more costly to fix in later stages than early in the acquisition. Last year we reported that the cumulative cost growth in DOD's portfolio of 96 major defense acquisition programs was \$296 billion, and the average delay in delivering capabilities was 22 months. These outcomes mean that other critical defense and national priorities may go unfunded and that warfighters may go without the capabilities they need.

Central to better managing risks is a capable acquisition workforce. However, DOD lacks key information about the current number and skill sets of its acquisition workforce and what it needs. To supplement its in-house acquisition workforce, DOD relies heavily on contractor personnel. Such reliance is symptomatic of DOD's overall reliance on contractors to provide additional capacity and expertise. Yet, precision on the size of the total contractor workforce and what roles they are fulfilling is elusive, hindering DOD's ability to make key workforce decisions and increasing the risk of transferring government responsibilities to contractors.

The current reform environment provides an opportunity to leverage the lessons of the past and manage risks differently. This environment is shaped by significant acquisition reform risks legislation, constructive changes in DOD's acquisition policy, and initiatives by the administration, including making difficult decisions to terminate or trim numerous weapon systems. To sustain momentum and make the most of this opportunity, it will be essential that decisions to approve and fund acquisitions be consistent with the reforms and policies aimed at getting better outcomes.

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Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the risks and outcomes associated with the defense acquisition process. In fiscal year 2009, the Department of Defense (DOD) spent nearly \$384 billion on contracts for goods and services. The significance of this investment, representing over 70 percent of total government contract spending, makes it imperative for DOD to manage risk in all of its acquisitions to ensure that the government's best interests are being met. The significance is further heightened by the critical role that contractors play in supporting DOD's mission—as starkly illustrated by the fact that in Iraq and Afghanistan the number of contractor personnel exceeds the number of military personnel. Risk is inherent in any major acquisition, whether a weapon system or complex service acquisition. But it is only through the thoughtful management of risks throughout all phases of the acquisition process that successful outcomes can be achieved. Clearly, however, DOD has not adequately managed such risks. For example, its major weapon systems continue to take longer to develop, cost more, and deliver fewer quantities and capabilities than originally planned. Last year we reported that the cumulative cost growth in DOD's portfolio of 96 major defense acquisition programs was \$296 billion and the average delay in delivering promised capabilities to the warfighter was 22 months. In addition, since 2001, DOD spending on contracts for services has more than doubled. We have reported that this growth has not been well managed—resulting from thousands of individual decisions that tended to be reactive, rather than from strategic, comprehensive planning—contributing to schedule delays, cost overruns, and unmet expectations.

Despite decades of reform efforts, these outcomes and their underlying causes have proven resistant to change and, in fact, both DOD weapon system acquisition and DOD contract management have been on our high-risk list for nearly 20 years. As recently as 2009, both Congress and DOD have taken action to infuse the weapon acquisition process with more knowledge and discipline, with laws and policy changes designed to allow DOD to balance requirements with resources before programs begin and produce more accurate cost estimates from the outset. In addition, Congress and the President have initiated other reforms aimed at improving government acquisition. While this most recent round of reforms is very promising, it is too early to tell if they will finally break the cycle of poor acquisition outcomes within DOD. Further, no reform will be successful without having the right people with the right skills to carry out and manage an acquisition program throughout the entire acquisition process. Unwarranted risks can undermine an acquisition in a number of

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ways. A poorly conceived acquisition is doomed from the outset, while a poor contract selection or an inadequate workforce can weaken the government's ability to manage and oversee the acquisition. Therein lies the challenge: it takes many things for an acquisition to succeed, while only one source of unmanaged risk can cause a poor outcome.

Today, we will discuss (1) planning of DOD's acquisitions; (2) contract types and the contract award process, including bid protests; (3) outcomes of major acquisitions programs; and (4) the acquisition and contractor workforce. We also will discuss relevant reforms in each area. For purposes of this discussion, we have broken the acquisition process down in to three broad phases: planning, contract award, and execution. This statement draws from our extensive body of work on DOD's acquisition of weapon systems and government contracting and on our experience in deciding bid protests. Our audit work was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## The Acquisition Process: Planning Phase

The first, and perhaps best, opportunity to reduce risk in any DOD acquisition is in the acquisition planning phase, when critical decisions are made that have significant implications for the overall success of an acquisition. Achieving the right knowledge at the right time enables leadership to make informed decisions about when and how best to move into succeeding acquisition phases. The appropriate amount of early planning helps to minimize risks in both weapon system and services acquisitions.

With regard to weapon systems, immature technology, unrealistic requirements, a lack of early system engineering, acceptance of unreliable resource estimates based on overly optimistic assumptions, and the failure to commit full funding all contribute to poor outcomes. We have frequently reported on the importance of using a solid, executable business case before committing resources to a new product development. Our body of work on best practices has shown that an executable business case is one that provides demonstrated evidence that (1) the warfighter's needs are valid and can best be met with the chosen concept; and (2) the chosen concept can be developed and produced within existing resources—that is, proven technologies, design knowledge, adequate

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funding, people (including an adequate technical, management, and acquisition workforce), and sufficient time to deliver the product. This business case should match requirements with resources and lock in those requirements. At the heart of a business case is a knowledge-based approach to product development that demonstrates high levels of knowledge before significant commitments are made. High levels of uncertainty set up programs for poor outcomes.

Our work on DOD's requirements process has shown that DOD does not adequately prioritize needs from a joint, departmentwide perspective and lacks the agility to meet changing warfighter demands. DOD often does not perform the proper up-front requirements analysis on individual programs to determine whether a weapon system will meet warfighter needs. Significant contract cost increases can and do occur as the scope of the requirements change or become better understood by the government and contractor. In addition, it is a best practice to achieve a high level of technology maturity—meaning that the technologies needed to meet essential product requirements have been demonstrated to work in their intended environment—prior to making significant commitments to the weapons program. Technology maturity is an important indicator of whether sufficient early acquisition planning and analysis has been conducted. Since 2003, there has been an increase in the technology maturity of DOD programs at the start of system development; however, few programs have met the best practices standard. In our 2009 assessment, on average, programs that reported fully mature technologies by development start have experienced 30 percent less growth in research and development costs over their first estimates than programs starting development with immature technologies.<sup>1</sup> When technology risks are not managed early, an acquisition program can run into difficulties in later phases. Having a feasible, stable preliminary design for a weapons program early in the acquisition process is also important in lessening risk, both by ensuring that there is a match between resources and requirements and by demonstrating that a product's design can meet customer requirements, as well as cost, schedule, and reliability targets. We have found that programs have too often moved forward in the development process without a stable design, although the level of design knowledge attained at key milestones has been increasing over time.

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<sup>1</sup>GAO, *Defense Acquisitions: Assessments of Selected Weapon Programs*, [GAO-09-326SP](#) (Washington, D.C.: Mar. 30, 2009).

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The Army's Future Combat System (FCS) was an example of a program for which requirements were not adequately defined and solidified early on, resulting in design churn and the potential for reduced capabilities. The Army started the FCS program in May 2003 before critical technologies were proven and key systems were defined; it did not expect to complete defining requirements and establishing system designs at least until 2009, 6 years after program initiation. As you know, the FCS has recently had elements cancelled and some of the remaining elements restructured into other programs. In another example, one of the defining technologies shaping the Navy's Ford-class aircraft carrier (CVN 21) design is the Electromagnetic Aircraft Launch System, a catapult system that uses an electrically generated, moving magnetic field instead of steam to propel aircraft to launch speed. Though the ship is under construction, the catapult technology is still immature. As we have previously reported, technical challenges have resulted in cost growth and delays that could disrupt construction of the lead ship.<sup>2</sup>

Service acquisitions also require early planning. Once DOD determines what services contractors should provide, both the contractor and the government need to have a clear sense of what the contractor is required to do under the contract. Poorly defined or changing requirements have contributed to increased costs, as well as services that did not meet the department's needs. The absence of well-defined requirements and clearly understood objectives complicates efforts to ensure accountability for acquisition outcomes. For example, we reported that a disagreement between a contractor and DOD on how to bill for food services in Iraq resulted in at least \$171 million in questioned costs that DOD did not pay.<sup>3</sup> A clearer statement of work, coupled with better DOD oversight of the contract, could have prevented the disagreement and mitigated the government's risk of paying for more services than needed.

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**Relevant Reform:  
Congressional and  
Departmental Initiatives**

Recent reform actions have been taken by Congress and DOD to address some early risk factors. The Weapon Systems Acquisition Reform Act of 2009, the National Defense Authorization Acts from fiscal years 2006 through 2009, and DOD's revisions to its acquisition policy in December 2008 all addressed issues essential to reducing risk in the early acquisition

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<sup>2</sup>GAO, *Best Practices: High Levels of Knowledge at Key Points Differentiate Commercial Shipbuilding from Navy Shipbuilding*, [GAO-09-322](#) (Washington, D.C.: May 13, 2009)

<sup>3</sup>Negotiations between the contractor and DOD resulted in a settlement under which \$36 million would not be paid to the contractor.

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planning phase, such as promoting early systems engineering, assessing technology maturity, controlling costs, and ensuring combatant commanders play a greater role in setting requirements. These are positive steps, but inconsistent implementation has hindered past DOD efforts to address problems with weapons acquisition. To improve outcomes on the whole, DOD must ensure that these and other policy changes are consistently put into practice and reflected in decisions made on individual acquisitions.

Similarly, over the last decade Congress has enacted legislation to improve DOD's management and oversight of services. In response to the National Defense Authorization Act for Fiscal Year 2002, DOD established a service acquisition management structure to ensure that DOD's services acquisitions are based on clear, performance-based requirements with measurable outcomes and that acquisitions are planned and administered to achieve intended results. Recently, DOD established a multiphased, peer-review process for services acquisitions intended to ensure consistent and appropriate implementation of policy and regulations, improve the quality of contracting processes, and facilitate sharing best practices and lessons learned. Going beyond the requirements of the legislation, DOD expanded its guidance on this review process to include its acquisition of weapon systems and products. We plan to report our initial observations of DOD's peer review process by the end of this month.

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## The Acquisition Process: Contract Award Phase

Once early acquisition planning is complete, DOD must select contracting instruments that match the needs of the acquisition and protect the government's interests. The information obtained during early acquisition planning can serve to inform the contract award phase and further reduce risk. During the contract award phase, DOD can choose among different contract types, pricing arrangements, and contract vehicles to acquire products and services. Of primary concern during this phase should be the proper allocation of risk between the government and contractor and ultimately what is in the best interest of the government. The way to do this is through selecting the appropriate contract type—ranging from fixed price to cost reimbursement—for the acquisition. Each contract type, described generally in table 1, comes with a different level of cost or performance risk for the government.



**Table 1: Contract Types**

Fixed-price	Time-and-Materials	Cost-reimbursement
<p><b>Government</b> pays a fixed price and is guaranteed an end item or service whether actual total cost of product or service falls short of or exceeds the contract price. May also pay an award or incentive fee related to performance.</p> <p><b>Contractor</b> provides an acceptable deliverable at the time, place, and price specified in the contract.</p> <p><b>Who assumes risk of cost overrun?</b> Contractor.</p>	<p><b>Government</b> pays fixed per-hour labor rates that include wages, overhead, general and administrative costs, and profit; government may reimburse contractor for other direct costs, such as travel and materials costs. Government is not guaranteed a completed end item or service within the ceiling price.</p> <p><b>Contractor</b> makes good faith effort to meet government's needs within the ceiling price.</p> <p><b>Who assumes risk of cost overrun?</b> Government.</p>	<p><b>Government</b> pays contractor's allowable costs, which do not include profit. Also pays a fee, which may be related to performance. Government is not guaranteed a completed end item or service within the estimated cost.</p> <p><b>Contractor</b> makes good faith effort to meet government's needs within the estimated cost.</p> <p><b>Who assumes risk of cost overrun?</b> Government.</p>

Sources: Federal Acquisition Regulation, Defense Federal Acquisition Regulation Supplement, DOD Contract Pricing Preference Guide (data); GAO (presentation and analysis).

Fixed-price contracts are generally considered to be the lowest risk to the government because the onus is on the contractor to provide the deliverable at the time, place, and price specified in the contract. In addition, the contractor is responsible for bearing any costs associated with a delay or inadequate performance, assuming that the government has not contributed to contractor performance issues through late delivery of government-furnished equipment or changing requirements.

Time-and-materials contracts constitute a higher risk to the government.<sup>4</sup> Under this contract type, the contractor provides its best efforts to accomplish the objectives of the contract up to the maximum number of hours authorized under the contract. Each hour of work authorizes the contractor to charge the government a fixed labor rate which includes profit. These contracts are considered high risk for the government because the contractor's profit is tied to the number of hours worked. The government is not guaranteed a completed service. Thus, the government bears the cost risk of paying for additional hours. To limit the risk from these types of contracts, the Federal Acquisition Regulation (FAR) provides that appropriate government monitoring of contractor

<sup>4</sup>The Federal Acquisition Regulation (FAR) provides that a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. T&M contracts exhibit some characteristics of fixed-price contracts in that T&M contracts contain fixed hourly labor rates and a ceiling price which the contractor exceeds at its own risk. FAR § 16.601.

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performance is required to give reasonable assurance that efficient methods and effective cost controls are being used. Although these contracts may be appropriate in certain circumstances, we have reported that contracting officers used this contract type for ease and flexibility in the face of unclear requirements or funding uncertainties and did not adequately determine, as required, that no other contract type was suitable.<sup>5</sup>

Cost-reimbursement contracts also pose high risk to the government. Federal agencies obligate more than \$100 billion annually using this type of contract. Cost-reimbursement contracts are considered high risk for the government because of the potential for cost escalation and because the government pays a contractor's allowable incurred costs to the extent provided in the contract regardless of whether the work is completed. As such, cost-reimbursement contracts are generally suitable only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed-price contract. The two major reasons for the inability to accurately estimate costs are (1) the lack of knowledge of the work needed to meet the requirements of the contract, for example, under research contracts, which necessarily involve substantial uncertainties, and (2) the lack of cost experience in performing work, such as the development of a weapon system where manufacturing techniques and specifications are not stable enough to warrant contracting on a fixed-price basis. When these conditions exist, the use of a cost-reimbursement contract may be appropriate. Conversely, when uncertainties have been reduced to a manageable level, a fixed-price contract generally is used. We reported in 2009, however, that key controls to ensure the appropriate use of cost-reimbursement contracts were not always used by agencies when selecting this contract type.<sup>6</sup>

As we look across DOD's many weapons programs, we typically see a migration from cost-type to fixed-price contracts as programs move from development to production. We become concerned, however, when we see programs like the Joint Strike Fighter move into the production phase for significant quantities under a cost-reimbursement contract, which

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<sup>5</sup>GAO, *Defense Contracting: Improved Insight and Controls Needed over DOD's Time- and-Materials Contracts*, [GAO-07-273](#) (Washington, D.C.: June 29, 2007).

<sup>6</sup>GAO, *Contract Management: Extent of Federal Spending under Cost-Reimbursement Contracts Unclear and Key Controls Not Always Used*, [GAO-09-921](#) (Washington, D.C.: September 30, 2009).

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suggests that the program still faces significant uncertainties and cost risks. The choice of contract type in this case may be consistent with the level of risk the program faces, but that level of risk may indicate a program not yet ready for production.

A variety of other contract types or agreements are also available, such as indefinite delivery/ indefinite quantity contracts,<sup>7</sup> blanket purchase agreements,<sup>8</sup> and undefinitized contract actions.<sup>9</sup> While these contracts and agreements offer the government the ability to adapt its business arrangements to the situation at hand, when they are not used properly the government could be exposed to undue risk. For example, we reported that agencies are not maximizing opportunities for competition or savings under blanket purchase agreements. Similarly, with the use of undefinitized contract actions, we have reported that the contractor has little incentive to control costs, creating a potential for wasted taxpayer dollars.

Regardless of the contract type selected, competition is the cornerstone of the acquisition process, and the benefits of competition in acquiring goods and services from the private sector are well established. Promoting competition—as opposed to sole-source contracts, where the government negotiates with only one source—can help save the taxpayer money, improve contractor performance, and promote accountability for results. Agencies are required to perform acquisition planning and conduct market research for all acquisitions in order to promote and provide for, among

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<sup>7</sup>There are three types of indefinite delivery contracts: definite-quantity contracts, requirements contracts, and indefinite quantity contracts. Indefinite Delivery/Indefinite Quantity contracts provide for an indefinite quantity, within stated limits, of products or services during a fixed period. The government places orders for individual requirements under these contracts.

<sup>8</sup>Blanket purchase agreements are a simplified method of filling anticipated repetitive needs for products and services by allowing agencies to establish “charge accounts” with qualified vendors. These agreements may be established under a General Services Administration schedule contract. Blanket purchase agreements are not contracts. See GAO, *Contract Management: Agencies Are Not Maximizing Opportunities for Competition or Savings under Blanket Purchase Agreements despite Significant Increase in Usage*, [GAO-09-792](#) (Washington, D.C.: September 9, 2009).

<sup>9</sup>To meet urgent needs, DOD can use undefinitized contract actions to authorize contractors to begin work before reaching a final agreement on contract terms. See GAO, *Defense Contracting: Use of Undefinitized Contract Actions Understated and Definitization Time Frames Often Not Met*, [GAO-07-559](#) (Washington, D.C.: June 19, 2007).

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other things, full and open competition. There are certain circumstances when sole source contracts may be appropriate, such as urgent needs or when there is truly only one source to provide the good or service, and Congress has allowed for such flexibility.<sup>10</sup> However, our work has identified situations where the government has not taken advantage of opportunities to compete work. For example, we found that the Army had issued contracts for security guards at U.S. military installations on a sole-source basis. Based on our recommendations, the contracts subsequently were competed, which resulted in cost savings.

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## Bid Protests: Promoting Transparency and Integrity

One of the principal tools for ensuring the integrity of the competition system is the bid protest process. GAO has been deciding bid protests since the 1920s. The Competition in Contracting Act of 1984 (CICA) codified GAO's role as a quasi-judicial forum to provide an objective, independent, and impartial process for the resolution of disputes concerning the award of federal contracts. We handle protests following the procedures set out in the Bid Protest Regulations in Part 21 of Title 4 of the Code of Federal Regulations. The existing process provides a balanced approach to adjudicate and resolve bid protest challenges to federal procurements. In fiscal year 2009, we received 1,764 protests, which is an increase of approximately 20 percent from 2008. See appendix I. This increase is driven in part by statutory expansions of GAO's bid protest jurisdiction. However, when viewed historically, and viewed in terms of the significant increases in procurement spending, the number of protests challenging contract awards in the last 5 years is relatively low. A more detailed analysis of our bid protest statistics pertaining to DOD specifically is included in appendix II.

The bid protest process involves a legal, adjudicative function; both the process and the resulting product differ from those associated with the reports that GAO issues in connection with its program audits and reviews. Protests are handled solely by GAO's Office of General Counsel (OGC), not by its audit teams. In developing the record, OGC provides all protest parties—the protester, the awardee, and the contracting agency—an opportunity to present their positions. In some cases, we

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<sup>10</sup>The Competition in Contracting Act of 1984 requires agencies to provide for full and open competition through the use of competitive procedures, unless one of seven specified exceptions applies. See 10 U.S.C. § 2304(c).

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conduct a hearing to further develop the record. Under CICA, as amended, we have 100 calendar days to decide a protest.

The product of a protest before GAO—our legal decision—does not address broad programmatic issues, such as whether or not a weapons program is being managed effectively or consistent with best practices. Our decision also reaches no conclusion about which of the offered goods or services will best meet the agency’s needs. Instead, a bid protest decision addresses specific allegations raised by an unsuccessful offeror challenging particular procurement actions as contrary to procurement laws, regulations, or the evaluation scheme set forth in the solicitation.

We sustain a protest when we find that the contracting agency has not complied with procurement laws, regulations, or the solicitation’s evaluation scheme, and that this error prejudiced the protester’s chances of winning the competition for the contract. Evaluating offerors in a manner consistent with the solicitation’s stated ground rules is a requirement for conducting an impartial and objective procurement. While the focus of this hearing is on our experience with DOD protests, we do not want to leave you with the impression that only DOD procurements experience problems, or the impression that DOD procurements experience problems more often than those of other federal agencies. That said, we have seen several cases involving DOD procurements in which the agency has not followed, or has misapplied, the ground rules for the competition as stated in the solicitation.

- In *Sikorsky Aircraft Company; Lockheed Martin Systems Integration—Owego*, B-299145 et al., Feb. 26, 2007, 2007 CPD ¶ 45, we sustained a protest involving an Air Force procurement of combat search and rescue replacement vehicles (CSAR-X). There, the agency evaluated offerors’ operating and support costs in a manner that was inconsistent with the stated evaluation criteria for cost/price. We recommended that the agency amend the solicitation to clarify its intent with respect to the evaluation of operating and support costs, seek revised proposals, and make a new source selection decision. The agency thereafter materially revised its solicitation, but did not permit proposal revisions, which led to another sustained protest. See *Sikorsky Aircraft Company; Lockheed Martin Systems Integration—Owego*, B-299145.5, B-299145.6, Aug. 30, 2007, 2007 CPD ¶ 155.
- In *The Boeing Company*, B-311344 et al., June 18, 2008, 2008 CPD ¶ 114, we sustained a protest involving the Air Force’s procurement of aerial refueling tanker aircraft. We found that the agency had deviated

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from stated evaluation criteria in a number of ways, including that the agency did not apply identified relative weightings in assessing the merits of the firms' proposals, and the agency considered exceeding "key performance parameter objectives" as a key discriminator between proposals when such consideration was prohibited by the solicitation. We also found a number of other areas where the evaluation was unreasonable in light of the solicitation requirements.

- In *Navistar Defense, LLC; BAE Systems, Tactical Vehicle Systems LP*, B-401865 et al, Dec. 14, 2009, 2009 CPD ¶ 258, we sustained a protest involving the Army's procurement of medium tactical vehicles. Although the solicitation provided that offerors whose key tooling and equipment did not exist would be viewed as presenting more risk than offerors who had such items on hand, the agency did not evaluate offerors' risk consistent with this solicitation requirement.
- In *Health Net Federal Services, LLC*, B-401652.3 et al., Nov. 4, 2009, 2009 CPD ¶ 220, and *Humana Military Healthcare Services*, B-401652.2 et al., Oct. 28, 2009, 2009 CPD ¶ 219, we sustained two protests involving DOD contracts for TRICARE managed health care support. Both protests involved instances where the agency deviated from the stated criteria during the evaluation of proposals. In both cases, we found that the agency did not adequately account for network provider discounts in the evaluation, as was required by the solicitation.

Although the examples above highlight instances where the agency did not adhere to stated evaluation criteria, there are other reasons why GAO might sustain a protest. For example, an agency's evaluation may not be adequately documented, or the evaluation conclusions may not be supported by the record. An agency also may have conducted inadequate or misleading discussions, or evaluated offerors' proposals in a disparate manner. Some of the cases above also include one or more of these additional reasons as a basis for sustaining the protest.

Despite several significant decisions sustaining protests, GAO's bid protest process reduces potential disruptions to DOD procurements as a result of three factors: (1) GAO consistently closes more than 50 percent of all protests involving DOD procurements within 30 days of filing; (2) remaining DOD protests must be, and are, resolved within 100 days of filing; and (3) CICA permits agencies to proceed with contract performance even before a protest is resolved when the goods or services are urgently needed, or when proceeding is in the best interests of the United States. In short, while there are challenges associated with

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balancing competing interests inherent in the protest system, public bid protest decisions serve a number of valuable public interests—providing transparency in the procurement system and guidance to the procurement community, without undue disruption to the acquisition process.

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### Relevant Reform: Congressional and Administration Initiatives

Congress has always had a strong interest in ensuring that the procurement system works as intended and recently has demonstrated an even more pronounced level of concern. This is evidenced by the creation of oversight bodies in both the House and Senate focused on contracting issues, as well as by hearings such as this one. On the legislative front, Congress has enacted measures designed to improve accountability, transparency, and effectiveness throughout the system. Most recently, for example, the National Defense Authorization Act for Fiscal Year 2010 provides for new controls over certain sole-source contracts and undefinitized contract actions.

The President's March 4, 2009, memorandum also addresses the need for improvement in the procurement system. In that memorandum and subsequent Office of Management and Budget guidance, the administration has tasked agencies with making measurable improvements in four key areas: (1) increasing competition, (2) reducing the use of high-risk contracting approaches, (3) improving the acquisition workforce, and (4) determining the appropriate use of contractors versus federal employees in doing the work of the government. We plan to track the progress made in each of the areas over time.

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### The Acquisition Process: Program Execution and Outcomes

After a DOD program moves into the final phase of the acquisition process, any risks that were not effectively managed in the earlier phases may contribute to or be compounded by new risks. For example, a program with immature technologies or unstable requirements will have a difficult time ensuring the design is mature before production begins. Problems are much more costly to fix in late development or production than before starting the acquisition. Weapon systems that cost more, take longer, and deliver fewer quantities and capabilities than originally planned are outcomes that are typically accepted and accommodated in the acquisition and budgeting processes. Recently, however, more dramatic actions have taken place in the form of cancellations of programs such as the VH-71 Presidential Helicopter, the Armed Reconnaissance Helicopter, the Transformational Satellite, and portions of the Future Combat System.

As we mentioned previously, in 2008, the cumulative cost growth in the DOD's portfolio of 96 major defense acquisition programs was \$296 billion and the average delay in delivering promised capabilities to the warfighter was 22 months. These outcomes mean that other critical defense and national priorities may go unfunded and that warfighters may go without the equipment they need to counter the changing threats that they face. Of these same programs, 75 percent reported increases in research and development costs since their first estimate, and 69 percent reported increases in total acquisition costs. It should be noted that DOD's performance in some of these areas is driven by older, underperforming programs as newer programs, on average, have not yet shown the same degree of cost and schedule growth. Table 2 depicts recent cost and schedule growth in major programs.

**Table 2: Analysis of DOD Major Defense Acquisition Program Portfolios**

Fiscal year 2009 dollars			
	Fiscal year		
	2003	2007	2008
<b>Portfolio size</b>			
Number of programs	77	95	96
Total planned commitments	\$1.2 trillion	\$1.6 trillion	\$1.6 trillion
Commitments outstanding	\$724.2 billion	\$875.2 billion	\$786.3 billion
<b>Portfolio indicators</b>			
Change to total RDT&E <sup>b</sup> costs from first estimate	37 percent	40 percent	42 percent
Change to total acquisition cost from first estimate	19 percent	26 percent	25 percent
Total acquisition cost growth	\$183 billion	\$301.3 billion <sup>a</sup>	\$296.4 billion
Share of programs with 25 percent increase in program acquisition unit cost growth	41 percent	44 percent	42 percent
Average schedule delay in delivering initial capabilities	18 months	21 months	22 months

Source: GAO analysis of DOD data

Notes: Data were obtained from DOD's Selected Acquisition Reports (SAR) (dated December 2002, 2006, and 2007). In a few cases data were obtained directly from program offices. The number of programs reflects the programs with SARs; however, in our analysis we have broken a few SAR programs into smaller elements or programs. Not all programs had comparable cost and schedule data and these programs were excluded from the analysis where appropriate. Portfolio performance data do not include costs of developing Missile Defense Agency elements or the Defense Integrated Military Human Resources System (DIMHRS) program.

<sup>a</sup>The total acquisition cost growth for the 2007 portfolio was \$295 billion in 2008 constant dollars.

<sup>b</sup>Research, Development, Test, and Evaluation



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The collective performance of the programs in DOD's portfolio is a key indicator of how well the acquisition system generates the return on investment that it promises to the warfighter, Congress, and taxpayers. On the whole, cost growth continues to have an adverse effect on the quantities programs are able to deliver to the warfighter. Cost increases have an impact on DOD's buying power for individual systems, as demonstrated by changes in program acquisition unit costs. As program costs increase, DOD must request more funding to cover overruns, make trade-offs with existing programs, delay the start of new programs, take funds from other accounts, or reduce procurement quantities. Late deliveries delay providing critical capabilities to the warfighter and result in operating costly legacy systems longer than expected, finding alternatives to fill capability gaps, or going completely without the capability. Ultimately, continued cost growth reduces DOD's overall buying power and results in less funding being available for other DOD priorities and programs. The Navy's fiscal year 2009 long-range ship construction plan is one such example: the plan provides for fewer ships at a higher unit cost—in both the near term and the long term—than the Navy outlined in its fiscal year 2008 plan because cost growth has mounted in current shipbuilding programs and the Navy has had to reallocate funds planned for future ships to pay for ones currently under construction.

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**Relevant Reform:  
Congressional Initiatives**

In the last several years, Congress has enacted legislation that could improve DOD's program outcomes. For example, in the National Defense Authorization Acts for fiscal year 2006 and for fiscal year 2008, Congress included a provision that requires decisionmakers to certify that programs meet specific criteria at key decision points early in the acquisition process. In addition, the Weapon Systems Acquisition Reform Act of 2009 contains provisions aimed at addressing requirements and improving the validity of cost estimates. Specifically, it established the positions of Director of Cost Assessment and Program Evaluation, Director of Developmental Test and Evaluation, and Director of Systems Engineering, as well as requirements for reports and guidance on systems engineering and developmental testing. The act also includes provisions related to the early consideration of trade-offs among cost, schedule, and performance early in the program cycle; early design reviews; and competitive prototyping.

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## Workforce: The Right People Doing the Right Work Is Essential to Program Success

Over the last several years, changes in the federal acquisition environment have created significant challenges to building and sustaining a capable acquisition workforce, which is responsible for planning, executing, and supporting DOD acquisitions. There has been a substantial increase in spending on acquisition programs and services, while the number of civilian and military personnel in DOD's acquisition workforce has remained relatively constant. Program offices have reported that workforce shortfalls have resulted in degradation in oversight, delays in certain management and contracting activities, and increased workloads for existing staff. To supplement its in-house acquisition workforce, DOD relies heavily on contractor personnel. For example, we have found that in some program offices contractor personnel outnumber DOD personnel.

Both GAO and DOD have noted that without an adequate workforce to manage the department's acquisitions, there is an increased risk of poor acquisition outcomes and vulnerability to fraud, waste, and abuse. However, DOD's lack of key pieces of information hinders its ability to determine gaps in the number and skill sets of acquisition personnel needed to meet its current and future missions. At a fundamental level, workforce gaps are determined by comparing the number and skill sets of the personnel that an organization has with what it needs. However, DOD lacks information on both what it has and what it needs. Specifically, it lacks complete information on the composition and skill sets of the current acquisition workforce—including contractor personnel—and whether these skill sets are sufficient to accomplish its missions. Not having this information skews analyses of workforce gaps and limits DOD's ability to make informed workforce allocation decisions.

In the broader context, DOD also has had difficulty identifying and quantifying its overall contractor workforce. To this end, Congress has enacted legislation in recent years to increase the availability of information on services acquisitions to improve DOD's ability to manage its use of contractors. For example, in 2008, Congress amended a requirement in place for DOD to compile annual inventories of the activities performed under contracts for services, to include information on the number of contractors paid for performing the services. The inventories are intended to help senior DOD officials make more informed acquisition and workforce decisions related to the use of contractors. We have found limitations with the inventories that were submitted for fiscal year 2008, as well as similar limitations in the department's ability to provide complete and reliable data on the number of contractors in Iraq and Afghanistan.

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Beyond the numbers of contractors, our recent work has shown that reliance on contractors to support core missions can place the government at risk of transferring government responsibilities, or inherently governmental functions,<sup>11</sup> to contractors. Of key concern is the loss of government control over and accountability for policy and program decisions. For example, we reported that DOD officials generally did not consider whether contractors may be unduly or inappropriately influencing government decision making, when making decisions regarding the use of service contractors. Another area where the appropriate role of the contractor has come into question is the use of the lead system integrator.

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**Relevant Reform:  
Congressional and  
Departmental Initiatives**

Congress has passed legislation designed to improve DOD's acquisition workforce. For example, Congress has provided expedited hiring authority for the defense acquisition workforce and has created a Defense Acquisition Workforce Development Fund with a dedicated funding stream to provide the necessary training and development resources. The department also has a number of initiatives underway to address deficiencies in its acquisition workforce, including conducting a competency assessment to identify the skill sets of its current in-house acquisition workforce and increasing the size of its acquisition workforce. The department is planning to increase the size of the acquisition workforce by up to 20,000 people by 2015, through a combination of new hires and insourcing work currently performed by contractors. In addition, DOD is currently working to develop a new more consistent approach for compiling future inventories of service contract employees to help provide better information for use by decision makers.

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**Concluding  
Observations**

The current state of defense acquisitions has been decades in the making. To a large extent, this reflects cumulative commitments to provide unparalleled long-term capabilities, to expedite near-term capabilities, and to accept the attendant risks. Over time, investment budgets have grown substantially to accommodate the foregoing. Today, DOD finds itself with a large portfolio of weapons and other acquisitions that it may not be able

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<sup>11</sup>Inherently governmental functions are those so intimately related to the public interest that they should only be performed by government personnel. These functions include those activities which require either the exercise of discretion in applying government authority or making value judgments in making decisions for the government. See Federal Acquisition Regulation 2.101.

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to afford, a large and hard-to-define contractor workforce, and a government workforce that may not be sufficient to manage and oversee the acquisitions and the contractors. The likelihood of smaller or level investment budgets, painful lessons learned from recent acquisitions, and a strained workforce, suggest that we need to manage risks differently. Right now, we have a great opportunity to do just that. The acquisition reforms that have been instituted by Congress, the administration, and DOD provide a good framework for managing risk. The recent difficult decisions to cancel or trim a number of major weapons programs suggest a collective willingness to make decisions that are consistent with reforms. In the past, good policies have been on the books, but decisions on what programs to approve and to support with funding often undermined those policies. Some fundamental lessons can help guide the decisions ahead. More specifically, a program must be put on a sound technical, cost, and schedule footing before it is approved—contract vehicles can accommodate risks but cannot fix a troubled program. At the same time, a flawed competition or contract award process can delay or disrupt an otherwise sound acquisition. A sound acquisition and contracting strategy is essential to executing the acquisition within time and funding budgets. A capable workforce must undergird all of the above.

Mr. Chairman, this concludes our prepared statement. We would be happy to answer any questions you may have at this time.

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# Appendix I: 2005-2009 Statistics for All GAO Bid Protests

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Fiscal year	Total cases	Dismissals	Merit results (sustain and deny)	Protests sustained
2005	1262	956	306	71
2006	1223	974	249	72
2007	1277	942	335	91
2008	1458	1167	291	60
2009	1764	1449	315	57

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Source: GAO

Note: These figures represent the number of protests. Often there are multiple protests filed for a single procurement action.

# Appendix II: 2005-2009 Statistics for GAO Bid Protests Involving DOD Components

## 2005 DOD Component Statistics

Component	Total cases	Dismissals	Merit results (sustain and deny)	Protests sustained
Air Force	127	93	34	13
Army	282	223	59	7
Defense Logistics Agency	121	108	13	0
Marine Corps	12	4	8	1
Navy	135	105	30	5
DOD (Misc.)	29	19	10	2
Defense Total	706	552	154	28

Source: GAO

Note: These figures represent the number of protests. Often there are multiple protests filed for a single procurement action.

## 2006 DOD Component Statistics

Component	Total cases	Dismissals	Merit results (sustain and deny)	Protests sustained
Air Force	148	105	43	13
Army	334	277	57	12
Defense Logistics Agency	70	62	8	3
Marine Corps	32	29	3	1
Navy	101	73	28	4
DOD (Misc.)	54	42	12	5
Defense Total	739	588	151	38

Source: GAO

Note: These figures represent the number of protests. Often there are multiple protests filed for a single procurement action.

## 2007 DOD Component Statistics

Component	Total cases	Dismissals	Merit results (sustain and deny)	Protests sustained
Air Force	136	103	33	16
Army	323	242	81	22
Defense Logistics Agency	97	80	17	0
Marine Corps	20	18	2	0
Navy	129	96	33	8
DOD (Misc.)	70	36	34	16
Defense Total	775	575	200	62

Source: GAO

Note: These figures represent the number of protests. Often there are multiple protests filed for a single procurement action.

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**2008 DOD Component Statistics**

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<b>Component</b>	<b>Total cases</b>	<b>Dismissals</b>	<b>Merit results (sustain and deny)</b>	<b>Protests sustained</b>
Air Force	154	132	22	9
Army	396	322	74	9
Defense Logistics Agency	87	74	13	1
Marine Corps	22	18	4	2
Navy	126	88	38	9
DOD (Misc.)	53	51	2	0
Defense Total	838	685	153	30

Source: GAO

Note: These figures represent the number of protests. Often there are multiple protests filed for a single procurement action.

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**2009 DOD Component Statistics**

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<b>Component</b>	<b>Total cases</b>	<b>Dismissals</b>	<b>Merit results (sustain and deny)</b>	<b>Protests sustained</b>
Air Force	189	168	21	3
Army	503	424	79	7
Defense Logistics Agency	127	109	18	3
Marine Corps	43	36	7	2
Navy	149	114	35	3
DOD (Misc.)	39	32	7	2
Defense Total	1050	883	167	20

Source: GAO

Note: These figures represent the number of protests. Often there are multiple protests filed for a single procurement action.

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# Appendix III: GAO Contacts and Staff Acknowledgments

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## GAO Contacts

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Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony.

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## Staff Acknowledgments

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